

**MINUTES  
FOR THE REGULAR MEETING  
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD  
Docket No. 5489**

**1. Opening of Meeting:**

The Appeals Board convened at 10:30 p.m., December 11, 2007 in Sacramento, with Chair Rick Rice presiding.

**2. Roll Call: Members**

**Present**

**Absent**

Rick Rice, Chair

x

Fred Aguiar, Vice Chair

x

Ann Richardson

x

Terri Carbaugh

x

Liz Figueroa

x

Cindy Montañez

x

Stephen Egan

x

**3. Approval of the Minutes:**

The minutes of the November 13, 2007 Board meeting were approved by all members present.

**4. Chair's Report:**

Chair Rice expressed his gratitude and appreciation to Mitzi Baker for organizing the annual Christmas party. He stated that it was a wonderful time to get to know each other. He also mentioned that Appellate Operations ALJ Linda Clevenger is retiring in May 2008, and will be sorely missed.

Chair Rice reiterated that the Governor is considering a 10% cut in his January 2008 address to the State. Chair Rice thanked the San Diego Office for the hospitality shown to him when he visited their offices, and noted that there are two unused executive offices that the Agency would consider retrofitting for use by ALJs and other staff.

**5. Board Member Reports:**

Member Richardson echoed her appreciation for the Christmas party. She also stated that she enjoyed working with all of Appellate Operations, and especially ALJ Linda Clevenger and bid her farewell and good wishes. Member Richardson commented that the Board should be aware there may be proposed amendments by Senator Kuehl to the Paid Family Leave Act which would expand its coverage to the siblings of claimants. Finally, Member Richardson asked whether we have a policy or committee so that field judges have the opportunity to look at proposed

precedent decisions before they are set for a Board vote.

Chair Rice said that maybe the Chief Counsel could address this issue since he heads up the precedent decision committee.

Members Carbaugh and Figueroa repeated the Chair's sentiment for Mitzi Baker in connection with the Christmas party and for ALJ Linda Clevenger's service and dedication with the Board.

## **6. Chief Administrative Law Judge/Executive Director's Report:**

Executive Director/Chief Administrative Law Judge Jay Arcellana advised that PALJ Hugh Harrison would update the Board on the workload. Executive Director/Chief ALJ Arcellana reported the following items:

- Following up on questions from the last Board meeting, the appeal rate from field decisions has consistently run at around 5% over the last year and a half. The only thing that has changed for the last year has been a substantial increase in the appeal of tax cases, at 11% in 2006 and 20% in 2007. Most appeals to the Board are by claimants, at 78%, while 21% are by employers, and 1% by EDD. The Department is very selective with their appeals, and has a 42% success rate upon appeal. The success rate on appeal for claimants is 7%, while it is 9% for employers. At the field level appeals by claimants from EDD determinations constitute 88.5% of all appeals, while the remainder are employer appeals. Claimants receive a favorable decision 43% of the time, and employers receive a favorable decision 36% of the time.
- With regard to case aging, we don't expect any improvement in this number for December, given the larger backlog that has developed plus the holidays and vacation time for staff. Although we will be increasing the ALJ's caseload in January, considerable staff time will be used to train our new hires.

Member Figueroa questioned what the oldest case is out there being held back. Executive Director Arcellana replied that each office has a report that lists open cases by age, but he doesn't have those figures before him presently.

Member Egan inquired as to the decline in the number of DI appeals. Executive Director Arcellana replied that it is hard to say, even the DI specialists have no answer. It happened in time coincidentally with the reformed compensation, so there might be some connection.

- In the last PALJ meeting, they engaged in planning for the workload next year. As stated, the ALJ caseload will be increased in January, by two cases each week. Case aging in November was 39 days. In California anything inside 40-45 days is good, which means cases are moving and

closed within that time period. New judges have been hired in San Diego and Oxnard, and we are in the process of hiring judges throughout the Bay Area, Fresno, and other offices. Also discussed was how to improve the tracking of constituent complaints, with a new system currently in development.

There was also a presentation on the pilot training session in which we kept the new judges in Sacramento for five straight weeks. As a result of our experience with that pilot, the next new ALJ training will intersperse the formal training in Sacramento with time for the judges in their assigned offices.

- The Decision Tool Project is currently being rolled out to the field. This is an automated process whereby judges and support staff will be provided with wonderful resource tools for writing and editing their decisions, and presumably improving the quality of those decisions.
- Finally, there will be new charges for use of the hearing room facilities in 17 locations, and a fair share process will have to be worked out. For example, in Santa Rosa the state building is being remodeled, so we will be subletting a room from the Worker's Compensation Division pursuant to an interagency agreement.

Member Richardson questioned if the 17 locations that we co-share is a full time 5 days a week type of thing, or just a per diem. Executive Director/Chief ALJ Arcellana responded that it varies with the location, and it all depends upon workload. In some locations we have access to the room five days a week, and in other locations it's just 3 days a week.

## **7. Branch Reports:**

- a. PALJ Hugh Harrison reported that November, with 3 holidays, is a relatively short month in terms of workload. There were 23,000 new cases, and 20,900 dispositions, which is less than the average for the year. November was the fourth month in a row in which there were more cases coming in than going out. The basic trend over the last 4-5 months has been a substantial increase in our cases. It is expected that by the end of the year more cases will be disposed than recent calendar years, and yet we will fall substantially behind the workload coming in. EDD has advised us that the claim filing is 22% higher than the year before. Their projection was that it would be flat. It was not until October that EDD substantially revised their projections and we got additional budgetary authority. Running against that trend, however, is DI, in which the number of claims has fallen every year for the last 7 years. Rulings on tax cases in the last three months are less than 100 cases, which is a dramatic drop off. The backlog is growing slightly due to new cases. We did not make the case aging guideline in November. We hope that with the additional resources we will be able to make that standard in March, which is when the official measurement by DOL occurs.

Member Richardson questioned about the impact of the mortgage industry layoffs. PALJ Harrison responded that layoffs do not impact us because those people get paid. We do not get separation issues when they just close their doors. We get more cases when industry slowly downsizes or when companies fire people because of performance issues.

Member Figueroa inquired about the real estate market, in that there might be some dispute or discussion regarding subcontractors. PALJ Harrison stated that time frame for tax cases is much longer than benefit cases, and usually there is not an issue until there is an obstructive claim, resulting in a time lag of 6 months to one year before the workload there increases.

- b.** Jehan Flagg, Special Assistant, Communications and Internal Affairs introduced a guest, Dale Jablonsky, Acting Chief Information Officer for the Labor and Workforce Development Agency.

Special Assistant Flagg reported that the Public Training Act workshops have been completed, and the participant surveys are now being analyzed. On a preliminary basis it appears that the workshops were well received. A special presentation was made at the PALJ meeting, with participation by DAG Ted Prim, the Attorney General's public records expert, and Chief Counsel Ralph Hilton. The feedback from the PALJs was very positive.

Special Assistant Flagg advised that the CUIAB is a stand-alone organization when it comes to operating our web servers, so our email addresses are not accessible by other state employees or state entities nor can we access other employees in the state. Special Assistant Flagg had a meeting with Administrative Deputy Director Pam Boston and her IT staff this week to determine how best to modify our infrastructure to remedy this situation within the State protocols.

Special Assistant Flagg reported that the agency is making a big effort to minimize the number of unauthorized disclosures of confidential information in the course of conducting our business. A training program is being developed with the Information Security Officer for early next calendar year, and we will be looking for opportunities to provide this training throughout the state.

Special Assistant Flagg further reported that a new Communications and Legislative policy will be on the January Board agenda for consideration. In addition, Special Assistant Flagg is representing Executive Division on the web committee, and invites anyone to submit suggestions they might have.

- c.** Deputy Chief ALJ, Appellate Operations Steve Angelides reported that in

November AO registered 1,031 cases, 83% of the calendar year average. Registrations would probably have been about average had it not been for a backlog of unregistered cases at the end of the month due to the three vacant

positions in registration. Dispositions in November were 1,225, which is right at the calendar year average. AO's balance of open cases at the end of November was 1,641, 88% of average. The average UI case age at the end of November was 38 days, which is 102% of our calendar year average. So aside from the registration backlog, November was the third average workload month in a row in AO.

AO is working through the registration backlog using overtime, and is continuing to use the hearing transcribers to help with case processing. As a result the transcript production fell to 3,671 pages in November, which is only 63% of the calendar year average, the lowest in the calendar year, and perhaps the lowest in decades. Consequently, the backlog of transcripts in CTU is now at 6 weeks, which is about double the typical backlog.

Deputy Chief ALJ Angelides reported that they are continuing to work on several special projects in AO: revision of acknowledgment and written argument forms and processes; drafting of a potential precedent decision on subject matter jurisdiction; work on a proposal for quality review in AO; revising decision forms in accordance with changes in the regulations which provide for an issue statement and findings of fact; and work on the appellate procedure manuals, currently on the late reviewer manual.

Deputy Chief ALJ Angelides presented the results of the Decision Tools pilot at last week's PALJ meeting. The pilot was successful and the PALJ's liked the program and want it installed in their offices, so IT will be deploying it in the near future.

He thanked staff who attended the annual holiday luncheon last week. It was the largest turnout of Board members in a number of years and helped get the holiday season off to a wonderful start.

Member Richardson stated that the Decision Tool presentation was amazing and that the Board Members should have access to the Decision Tools also. She commended Deputy Chief Steve Angelides and his staff. She suggested that the rest of the Board members might want a demonstration at the next Board meeting.

Deputy Chief ALJ, Appellate Operations Steve Angelides indicated that the Decision Tool will be placed on all CUIAB computers. He gave credit to ALJ Katherine Leslie, Mary Mitchell, and the IT staff who put it all together.

**d.** Deputy Director, Planning and Program Management Branch Mary Walton-Simons reported on the following items:

Since the last board meeting, Public Records Act training has been provided to 173 CUIAB support staff employees and their Legal Support Supervisors, plus training was provided to the PALJs at their meeting. She acknowledged Ralyne Long who did the research on the PRA and prepared the Power Point; and to the PPM staff for the preparation of all the handout materials.

Effective November 2007, the Budget Officer in the PPM Branch, Renee Erwin, has established an electronic process for CUIAB Cost Center Managers to review and approve Department of General Services (DGS), Fleet Administration invoices for state car charges. For Appellate and Field Operations, the cost center managers are the Presiding ALJs.

This process will provide the cost center managers with the ability to monitor authorized users, ensure logs are being completed and turned in, and that the charges are appropriate on a monthly basis.

A committee was formed earlier in the year in the PPM Branch to write a manual to how to plan, organize and conduct a National Unemployment Insurance Appellate Board (NAUIAB) conference. This committee included Martha Silva, Jeanette Perez, Pat McArdle, Ryann Rojas and Cindy Abercrombie. The goal was to provide a step-by-step manual that any host state could use to host a national conference. Since the planning of a NAUIAB conference begins three years from the conference date, the manual was written to keep the host state on track and guide it through its yearly tasks. So far, the States of Mississippi and Connecticut have asked and received a copy of the manual.

The PPM Branch routinely administers the Spanish oral fluency exam for other departments through the coordinated efforts of one of our managers, Martha Silva. She recently received recognition from the Department of Alcohol & Drug Programs.

The CURV pilot project was developed to expedite the registration/verification process by eliminating duplicative work processes, reducing postage and supply costs, improving processing times, decreasing the information security risks, and standardizing functions and processes between offices.

The first CURV pilot project initiated in February 2007 has been independently operational for almost one year. The Los Angeles office continues to provide Central Office assistance to the Sacramento Office processing an average of 500 cases per month.

The second CURV pilot project was initiated on August 6, 2007 between Orange County and San Diego. The Orange County Office is committed to provide assistance to the San Diego Office through January 11, 2008 processing an average of 600 cases per month.

Without the CURV Pilot Project, San Diego's monthly backlog would have increased to over 800 unverified cases. These two offices will reevaluate the CURV work sharing arrangement for future months.

Four staff of the PPM Branch provided 689 minutes of bilingual assistance to the Appellate Operations in the month of November. Thanks was given to Martha Silva, Anissa Michell, Mirella Gomez and Alfredo Garcia for working on this special assignment.

Chair Rice commended the great job on the PRA Training.

## **8. Chief Counsel's Report:**

Chief Counsel Ralph Hilton reported that eight new cases were filed against the Board last month, and two cases were closed, both of which affirmed the Board's decisions.

Mr. Swanson is the claimant who spoke at the last Board meeting. A thorough review of Mr. Swanson's cases was conducted. Final decisions had already been rendered in all of those cases, which means that the Board has no authority to change any of the decisions in those cases. Mr. Swanson currently has no matters pending before the CUIAB. Further, no irregularities were found in any of Mr. Swanson's cases. Mr. Swanson must to court for any remedies he may seek with regard to those decisions. I have advised Mr. Swanson in writing of our findings. The Board had previously apologized, approximately one year ago, to Mr. Swanson for a delay in the issuance of one of his decisions.

In response to Member Richardson's prior inquiry about a precedent committee, Chief Counsel Hilton advised that in addition to himself, there are two representatives each from the field and from appellate, and that the process includes review by PALJs and appellate judges before submission to the Board.

Chair Rice reported that at the last closed session the Board voted to request an audit. The attorney doing the investigation for Labor Agency of two specific employee complaints has found other issues that he recommended for further investigation. Chair Rice provided copies of the recommendation for other Board members and staff, with redactions of personal information. Chair Rice advised that the Board would convene a closed session to discuss the personnel issues involved in that recommendation.

Member Figueroa commented that she does not support the audit on the specific issue discussed at the last Board meeting, but she would consider new issues for audit if the prior vote could be rescinded.

Chief Counsel Hilton responded that that is not possible. Member Figueroa can move to supplement or amend it, but the prior vote is final and cannot be withdrawn or rescinded and must always be a part of the record.

Member Figueroa wants to exclude the review of the CUIC 406(b) process as she has some concern about that.

Member Figueroa introduced Rona Sherriff, consultant for the Senate Office of Research, who was present and who also handles the Senate confirmation process.

**9. Unfinished & New Business:**

Special Assistant Jehan Flagg reported that she is working on the draft communication and legislative policy, as noted previously, and they hope to have it ready for a vote at the next Board meeting.

**10. Public Comment:**

None

**11. Closed Session:**

The Board went into closed session.

Upon returning to open session, the Board did the following:

The Board voted and passed on a motion to request that the previously approved request for a CUIAB 406(b) audit be expanded to those issues raised in the Labor Agency investigator's recommendation, including concerns regarding CUIAB's hiring practices, management issues related to nepotism, and serious misconduct by individuals. Chair Rice did a roll call vote and all present voted aye except for Member Richardson, who abstained.

Member Figueroa brought up an issue about attendance at Board meetings. She said that since they just went over completing timesheets she thinks Board meetings are important enough that if a member is unable to attend the Board meeting in person or by phone they should take the day off. Regarding attendance by phone, Member Richardson interjected that if a member is to attend by phone, the member needs to notify the Board 10 days out so that notice of attendance from the phone location can be given since any member of the public has a right to attend the meeting at anyplace from which a Board member participates. The members agreed with Member Figueroa's suggestion and Chair Rice stated that it should be brought up at the next Board meeting. He thinks that it represents good policy.